***THE HON'BLE Ms. JUSTICE G. ROHINI**

+WRIT PETITION NO.27978 OF 2005
AND
WRIT PETITION NO.768 OF 2006

% 06/07/2006

Akash Cable T.V. Network Private Limited,
represented by Managing Director, Nellore. **...** **(**Petitioner in
W.P.No.27978 of 2005)

1.Chatala Mallikarjuna Rao and another… (Petitioner in W.P.No. 768 of 2006)

Vs.

$ 1. Telecom Disputes Settlement & Appellate
Tribunal, New Delhi, and four others. **...** **(**Respondents in W.P.No.
27978 of 2005)

1. Telecom Regulatory Authority of India, New Delhi,
and three others. **....** **(**Respondents in W.P.No. 768 of 2006)

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> Head Note :

! Counsel for the petitioner : Sri L. Venkateswara Rao
in W.P.No.27978 of 2005

Counsel for the petitioner : Sri C.V.R. Rudra Prasad
in W.P.No.768 of 2006

^ Counsel for the respondents : Sri A.Rajasekhara Reddy,
in both writ petitions. Asst. Solicitor General of India
Sri K. Ramakanth Reddy
Sri M.P. Chandramouli
Sri C. Sudesh Anand

Cases Referred :

- NIL -

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.27978 OF 2005
AND
WRIT PETITION NO.768 OF 2006

Dated: 6th July, 2006.

W.P.No.27978 of 2005:

Between:

Akash Cable T.V. Network Private Limited, represented by Managing Director, Nellore.

..... PETITIONER

AND

1. Telecom Disputes Settlement & Appellate Tribunal, New Delhi, and four others.

.....RESPONDENTS

W.P.No.768 of 2006:

Between:

Chatala Mallikarjuna Rao and another.

....PETITIONERS

AND

1. Telecom Regulatory Authority of India, New Delhi,
and three others.

....RESPONDENTS

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THE HON'BLE Ms. JUSTICE G. ROHINI
WRIT PETITION NO.27978 OF 2005
AND
WRIT PETITION NO.768 OF 2006

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COMMON ORDER :

Akash Cable TV Network Private Limited, Nellore, is the petitioner in W.P.No.27978 of 2005. The respondents 3 and 4 in the said writ petition are the petitioners in the other writ petition – W.P.No.768 of 2006.

Since both the matters are inter-connected and the prayer in both the writ petitions being common, these two writ petitions are heard together.

For the sake of convenience, the parties shall be referred to as they are arrayed in W.P.No.27978 of 2005.

In both these writ petitions, a Writ of Mandamus has been sought declaring the Telecommunication (Broadcasting and Cable Services) Inter-connection Regulations, 2004 as illegal and ultra vires the provisions of the Telecom Regulatory Authority of India Act, 1997 and consequently to set aside the order dated 14-12-2005 passed by the Telecom Disputes Settlement and Appellate Tribunal, New Delhi in Petition No.97 (C) of 2005 being arbitrary and without jurisdiction.

The facts, which are not in dispute, are as under :

Akash Cable TV Network Private Limited (hereinafter referred to as 'the writ petitioner') which is a company incorporated under the Companies Act, 1956, is engaged in the business of providing cable television network to the subscribers in the town of Nellore. It is not in dispute that the activities of the writ petitioner are governed by the Cable Television Networks (Regulation) Act, 1995 (for short 'the Cable Act, 1995') and the Telecom Regulatory Authority of India Act, 1997 (for short 'the TRAI Act, 1997') among other enactments.

The writ petitioner is registered as a cable operator under the provisions of the Cable Act, 1995. As per the said registration, the writ petitioner has been providing GEMINI and TEJA channels which are broadcast by Channel Plus-AP, a unit of GEMINI TV Private Limited. The said Channel Plus-AP (hereinafter referred to as 'the 3rd respondent') is a "service provider" as defined under the TRAI Act, 1997. Initially, the 3rd respondent was offering GEMINI and TEJA channels free to air channels, however subsequently the said channels were converted into pay channels in the year 2002. The system of pay channels involves encryption of signals by the service provider who on payment of prescribed fees would issue decoders to the cable operators and the cable operators would then decode the encrypted signals and transmit the same to their subscribers. The 3rd respondent has appointed one Chatala Mallikarjuna Rao (hereinafter referred to as 'the 4th respondent') as its distributor for the towns of Nellore and Kovur in the year 2002 and since then the third respondent has been offering all its pay channels through the fourth respondent. The writ petitioner entered into an agreement dated 26-10-2002 with the 4th respondent by virtue of which the writ petitioner obtained exclusive right to distribute the pay channels offered by the 3rd respondent in Nellore and Kovur towns. It is stated that in terms of the agreement, the writ petitioner had paid considerable amounts to

the 3rd respondent - service provider.

While so, the writ petitioner filed O.S.No.3 of 2003 on the file of II Additional District Judge, Nellore, seeking an injunction restraining the 4th respondent herein from offering the pay channels to any other operator in the towns of Nellore and Kovur alleging that he was offering the pay channels to other cable operators in Nellore town in breach of the agreement dated 26-10-2002. It appears that the defendant (4th respondent herein) remained *ex parte* and consequently O.S.No.3 of 2003 was decreed *ex parte* on 01-04-2003.

The 5th respondent - Raja Rajeswari Channel who is also a cable operator at Nellore along with other cable operators filed W.P.No.8693 of 2004 in this Court seeking a declaration that the failure on the part of the 3rd respondent - Channel Plus-AP to provide decoders for the pay channels was illegal and in violation of Articles 14 and 19 (1)(g) of the Constitution of India. Though initially the said writ petition was disposed of by order dated 15-06-2004, on appeal a Division Bench has set aside the said order with a direction to hear the matter afresh.

The 5th respondent - Raja Rajeswari Channel had also approached Monopolies and Restrictive Trade Practices Commission (for short 'MRTP Commission') alleging monopolistic and restrictive trade practices by the 3rd respondent - Channel Plus-AP. That apart, the 5th respondent also made a representation dated 14-12-2004 to the 3rd respondent seeking decoders for GEMINI and TEJA pay channels. The 3rd respondent by letter dated 11-01-2005 informed the 5th respondent that its request for providing decoders cannot be considered in view of the decree of injunction dated 01-04-2003 granted against its distributor in O.S.No.3 of 2003 on the file of the

In the meanwhile, Telecommunication (Broadcasting and Cable Services) Inter-connection Regulations, 2004 (for short, 'Regulations, 2004') made by the Telecom Regulatory Authority of India (TRAI) in exercise of the powers conferred under Section 36 of TRAI Act, 1997 have been enforced with effect from 10-12-2004. In the changed circumstances, the 5th respondent approached the TRAI alleging that the action of the 3rd respondent in not providing decoders was in violation of the Regulations, 2004. The contention was that as per the said Regulations, decoders were bound to be provided to any multi-system operator on payment of charges and therefore the alleged agreement dated 26-10-2002 was a nullity. However, the TRAI, by letter dated 13-06-2005 informed the 5th respondent that there was no apparent violation of the Regulations, 2004 on the part of 3rd respondent - Channel Plus-AP on the ground of its failure to issue decoders.

Thereafter, the 5th respondent filed a petition before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi, (for short 'the Tribunal') under Section 14 of the TRAI Act, 1997 seeking a direction to the 3rd respondent - Channel Plus-AP to issue decoders (signals and sim-cards) on payment basis. The Tribunal, having considered the entire material on record, by order dated 14-12-2005, held that the decree in O.S.No.3 of 2003 did not come in the way of the 3rd respondent - Channel Plus-AP from providing signals of GEMINI and TEJA channels to the 5th respondent - Raja Rajeswari Channel. Accordingly, the 3rd respondent was directed to supply signals of GEMINI and TEJA channels on such agreed terms between the parties within two weeks.

Aggrieved by the said order, Akash Cable TV Network Private

Limited filed W.P.No.27978 of 2005 contending inter alia that the order dated 14-12-2005 which was passed without notice to it, is arbitrary, illegal and violative of the fundamental principles of natural justice. It is also contended that the Regulations, 2004 are illegal and contrary to the provisions of the TRAI Act impinging upon the rights of the writ petitioner guaranteed under the Constitution of India and are liable to be struck down. Thus, a declaration has been sought that the order of the Tribunal, dated 14-12-2005 is without jurisdiction and further to declare that the Regulations, 2004 are ultra vires the provisions of the TRAI Act, 1997.

During the pendency of the above writ petition, the 4th respondent filed a fresh writ petition being W.P.No.768 of 2006 with a similar prayer to declare the order of the Tribunal dated 14-12-2005 as arbitrary and without jurisdiction and also to declare the Regulations, 2004 made by the TRAI, more particularly the definition of '*service provider*' as ultra vires the provisions of the TRAI Act, 1997. The 3rd respondent in W.P.No.27978 of 2005 (Channel Plus-AP) got itself impleaded as petitioner No.2 in W.P.No.768 of 2006.

I have heard both the writ petitions together and perused the material on record.

Sri C.V. Mohan Reddy, the learned Senior Counsel and Sri S. Ravi, the learned Counsel appearing for the petitioners, while referring to the various provisions under the Cable Act, 1995, TRAI Act, 1997 as well as the Regulations, 2004, contended that under Section 36 of the TRAI Act, the TRAI was not vested with any power or authority to make Regulations to regulate the relations between a service provider on the one hand and a cable operator on the other and therefore the Regulations, 2004 regulating the inter-connection between cable operators and the service providers thereby restricting the business activities of the cable operators are ultra vires the Act.

So far as the impugned order passed by the Tribunal dated 14-12-2005 in Petition No.97(c) of 2005 is concerned, the learned Counsel contended that the same was without jurisdiction since Section 14 (a) of the TRAI Act does not empower the Tribunal to entertain a dispute between a service provider and cable operator. At any rate, since the impugned order was passed without hearing the affected parties, it was in violation of the fundamental principles of natural justice and therefore liable to be set aside on that ground alone.

On the other hand, Sri E. Manohar, the learned Senior Counsel appearing for the 5th respondent at the outset raised an objection as to the maintainability of the writ petitions contending that against the impugned order of the Tribunal, an alternative remedy of appeal is provided under Section 18 of the TRAI Act, 1997. The learned Senior Counsel contended that since the petitioners failed to exhaust the efficacious alternative remedy available under the statute, the writ petitions are liable to be dismissed in limini.

The learned Assistant Solicitor General of India appearing for the respondents, while opposing the writ petitions on the ground of availability of alternative remedy, further submitted that the cable operators are also service providers as defined under the TRAI Act, 1997 and therefore the impugned Regulations are valid and unassailable.

As can be seen from the preamble of the TRAI Act, 1997, the said Act has been enacted to provide for the establishment of the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the Telecom Sector to

promote and ensure orderly growth of the telecom sector and for matters connected therewith or incidental thereto.

Under Section 3 of the said Act, the authority called the Telecom Regulatory Authority of India (TRAI) has been established, the functions of which have been enumerated under Section 11 of the Act. That apart, Section 12 empowers the TRAI to call for information and conduct investigations etc., where it considers expedient so to do. Under Section 13, the TRAI may issue such directions from time to time to the service providers for discharge of its functions under sub-section (1) of Section 11 of the Act.

Whereas Section 35 of the Act empowers the Central Government to make Rules for carrying out the purposes of the Act, under Section 36 the TRAI is conferred with power to make Regulations consistent with the Act and the Rules made thereunder to carry out the purposes of the Act.

In exercise of the said power conferred under Section 36 read with Section 11 (1) (b) paras (ii), (iii) & (iv) of the TRAI Act, 1997, the TRAI made the Regulations called the Telecommunication (Broadcasting and Cable Services) Inter-connection Regulations, 2004 which cover arrangements among service providers for interconnection and revenue share for all telecommunication services throughout the territory of India.

The vires of the said Regulations is challenged in these two writ petitions on the ground that the TRAI Act, 1997 does not enable the TRAI to frame Regulations to deal with the cable operators and multi-system operators. The contention of the petitioners is that the TRAI can ensure technical compatibility and effective inter-connection only between different service providers as provided under Section 11 (1) (b) (iii) of the Act. Since none of the clauses under Section 11 of the

Act include the inter-connection between service providers and cable operators, in exercise of the powers under Section 36 the TRAI cannot make the impugned Regulations to regulate the relations between a service provider on the one hand and a cable operator on the other.

For proper appreciation of the above contentions, it would be appropriate to refer to the relevant provisions under the TRAI Act, 1997 and the Regulations, 2004.

At the outset, the definitions of the ***Licensee, Service Provider*** and ***Telecommunication Service*** as defined under Section 2 (1) of the TRAI Act, 1997 may be noted as under :

> *(e) "**Licensee**" means any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;*
> *(j) "**service provider**" means the Government as a service provider and includes a licensee;*
> *(k) "**telecommunication service**" means service of any description (including electronic mail, voice mail, data services, audio tax services, video tax services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services :*
>
> *Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.*

Section 36 of the Act which empowers the TRAI to make the Regulations may also be noted as under :

> *"**36. Power to make regulations** :-- (1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.*
> *(2) In particular, and without prejudice to the generality of the*

foregoing power, such regulations may provide for all or any of the following matters, namely :--

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

{ Clause (c) omitted by Act 2 of 2000 }

(d) matters in respect of which register is to be maintained by the authority under sub-clause (vii) of clause (b) of sub-section (1) of section 11;

(e) levy of fee and lay down such other requirements on fulfillment of which a copy of register may be obtained under sub-clause (viii) of clause (b) of sub-section (1) of section 11;

(f) levy of fees and other changes under clause (c) of sub-section (1) of section 11"

It is relevant to note that the definition of 'Telecommunication service' under Section 2 (1) (k) though initially did not include Broadcasting and Cable Services, a proviso was inserted to Section 2 (1) (k) under the Amendment Act 2 of 2000 w.e.f. 24-1-2000 empowering the Central Government to notify other service to be telecommunication service including broadcasting services. In exercise of the said power, the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India vide Notification dated 9-1-2004 notified broad-casting and cable service as telecommunication services. Thereafter, TRAI made the impugned regulations of 2004 covering the arrangements among service providers for inter-connection and revenue share for all telecommunication, broadcasting and cable services throughout the territory of India.

Under Section 2 of the said Regulations, the words "cable operator", "distributor of TV Channel", "multi-system operator" and "service provider" have been defined as under :

*"**2. Definitions** :--(1) In these regulations, **unless the context otherwise requires**, --*

(a) … … … .. …

(b) … … … .. …

(c) … … . … …

(d) … … … … …

(e) … … … … …

(f) …. … …. …. …

*(g) "**cable operator**" means any person who provided cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;*

(h) .. … … … …

(i) … … … … …

*(j) "**distributor of TV channels**" means any person including an individual, group of persons, public or body corporate, firm or any organization or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly. The person may include, but is not limited to a cable operator, direct to home operator, multi-system operator, head ends in the sky operator;*

(k) … … .. … …

(l) … … … … ..

*(m) "**multi-system operator**" means any person who receives a broadcasting service from a broadcaster and/or their authorised agencies and re-transmits the same to consumers and/or re-transmits the same to one or more cable operators and includes his / her authorised distribution agencies.*

*(n) "**service provider**" means the Government as a service provider and includes a licensee as well as any broadcaster, multi-system operator, cable or distributor of TV channels."*

It is true that the definition of "Service Provider" under Section 2 (1) (j) of the TRAI Act does not expressly include cable operators and multi-system operators. Section 36 of the TRAI Act, 1997 read with Section 11 also does not specifically deal with cable operators and multi-system operators.

However, under Section 36 (1) of the Act, the TRAI is empowered to make Regulations consistent with the Act to carry out the purposes of the Act. Though, sub-section (2) of Section 36 enumerates certain matters in respect of which the TRAI may make Regulations, it is without prejudice to the general power conferred under sub-section (1) of Section 36 of the Act.

It is also relevant to note that under Section 11 of the TRAI Act, 1997, the powers and functions of the TRAI have been specified which include fixing the terms and conditions of inter-connectivity between the service providers, ensuring technical compatibility and effective inter-connection between different service providers and regulating arrangement amongst service providers of sharing their revenue derived from providing telecommunication services.

To be precise, the above said functions which are specified under Section 11 (1) (b) may be extracted hereunder :

> *"**11. Functions of Authority** :- (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to –*
> *(a) … .. …. … .. ….. ..*
> *… … …. …. … ….. …*
> ***(b) discharge the following functions, namely** :--*
> *(i) … .. …. .. .. … …*
> *(ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers;*
> *(iii) ensure technical compatibility and effective inter-connection between different service providers;*
> *(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services*
> *… … … … …. … …..;"*

Though the learned Counsel for the petitioners did not dispute the authority of the TRAI under Section 36 (1) of the Act to make Regulations to carry out the functions enumerated under Section 11 (1) (b) of the Act, particularly with regard to functions specified under clauses-ii, iii & iv extracted above, it is contended that since the said clauses have only referred to "service providers", the Regulation making power cannot be extended to cable operators and multi-system operators.

It is to be noted Section 2 (1) of the TRAI Act, 1997 starts with the words *"In this Act, unless the context otherwise requires".* The said expression indicates that where the context makes the definitions given in Section 2 (1) of the Act inapplicable, such words when used in the body of the Act may have to be given a different meaning. The law is well settled that the meaning to be ordinarily given to the words employed in the statute is that as defined in the definition clause. However, where the opening sentence in the definition clause states that ***unless the context otherwise requires***, it is necessary for the Court to look at not only the words but also the context and the object of such words and interpret the meaning intended to be conveyed under the circumstances. In a catena of decisions, it has been held by the Apex Court that a definition is not to be read in isolation, but it has to be read in the context of the particular sections in the statute to make the statute workable.

Thus, it is clear that in view of the qualifying expression i.e., "***in this Act unless the context otherwise requires***" the definitions contained in Section 2 (1) of the TRAI Act, 1997 must be examined in the light of the context in which the particular word is used keeping in view the object underlying the Act, the preamble and all the other enacting parts of the statute. The Statement of Objects and Reasons of the TRAI Act, 1997 shows that the Act has been enacted to constitute an independent Telecom Regulatory Body for regulation of

telecom services for orderly and healthy growth of telecommunication infrastructure apart from protection of consumer interest. As noted above, by virtue of the Notification dated 9-1-2004 the cable sector has also been brought under the telecommunication services. Hence, undoubtedly, the word "service provider" means not only the Government and the licensee but also includes the other categories of persons if the context of the Act so requires.

Keeping in view the object of the TRAI Act, 1997 and the powers and functions of the TRAI as enumerated under Section 11 of the Act as well as the power conferred on the TRAI under Section 36 (1) to make regulations consistent with the Act and the Rules made thereunder to carry out the purposes of the Act and by virtue of the opening words viz., ***in this Act unless the context otherwise requires*** in sub-section (1) of Section 2 of the Act, I am of the opinion that the definition of ***service provider*** under Section 2 (1) (j) is inclusive of cable operators on account of the context in which the said word has been used in Section 36 read with Section 11 (b) of the TRAI Act. Consequently the TRAI is competent to make regulations under Section 36 of the Act even with regard to the matters relating to the cable operators.

It is brought to my notice that, in identical circumstances, the Tribunal (Telecom Dispute Settlement and Appellate Tribunal), in Petition No.41(c) of 2005 filed by Sea T.V. Network Limited against Star India Private Limited negatived the contention of the respondent therein that a cable operator is not a service provider. Aggrieved by the said order, dated 24-8-2005, the Star India Private Limited preferred an appeal being C.A.No.5524 of 2005, and the Supreme Court of India, though entertained the appeal, by order, dated 2-3-2006, declined to grant any interim relief.

Hence, there is absolutely no substance in the contention of the

petitioner that the impugned Regulations are ultra vires the TRAI Act, 1997.

Coming to the correctness of the order passed by the Tribunal, dated 14-12-2005, as rightly contended by the learned Counsel for the respondents, since Section 18 provides a remedy of appeal to the Supreme Court, without exhausting the said alternative remedy, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

However, the learned Counsel for the petitioners contended that under proviso (A) to Section 14 of the Act, there is a statutory bar in adjudicating any dispute which falls under the exclusive jurisdiction of Monopolies and Restrictive Trade Practices Commission, established under Section 5 (1) of the Monopolies and Restrictive Trade Practices Act, 1969. It is contended that the allegation made by the 5th respondent - M/s. Rajarajeswari Channel that the 3rd respondent had created a monopoly by entering into an exclusive agreement with the 4th respondent, falls within the jurisdiction of MRTP Commission and therefore the Tribunal has no jurisdiction to entertain the same. It is further contended that under Section 14 (a) the Tribunal is competent to adjudicate any dispute only between the three categories of persons specified thereunder which do not include the cable operators and multi-system operators. Hence, on that ground also, the Tribunal has no jurisdiction to entertain the dispute raised by the 5th respondent, who is admittedly a cable operator. Lastly, it is contended that since the Tribunal had passed the impugned order without notice to the petitioner in W.P.No.27978 of 2005, who is the aggrieved party, the impugned order is in violation of the principles of natural justice.

Thus, the petitioners contended that the impugned order being without jurisdiction and violative of principles of natural justice, the

availability of alternative remedy is not an absolute bar to grant the relief under Article 226 of the Constitution of India.

Section 14 of the Act, on the basis of which, the petitioners have advanced the above contentions, runs as under :

> *"**14. Establishment of Appellate Tribunal** :- The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—*
> *(a) adjudicate any dispute--*
> *(i) between a licensor and a licensee;*
> *(ii) between two or more service providers;*
> *(iii) between a service provider and a group of consumers :*
> *Provided that nothing in this clause shall apply in respect of matters relating to –*
> *(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);*
> *(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);*
> *(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885);*
> *(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act."*

It is true that the proviso (A) to Section 14 of the TRAI Act creates a statutory bar in respect of complaints relating to monopolistic trade practices. However, in the case on hand, the dispute raised by the 5th respondent cannot be said to be a complaint solely pertaining to monopolistic trade practice, restrictive trade practice and unfair trade

practice. The grievance of the 5th respondent being that the 3rd respondent (Channel Plus-AP) had acted in violation of the Regulations, 2004, the same has to be adjudicated only by the Tribunal under Section 14 (a) of the TRAI Act, but not by the MRTP Commission. As a matter of fact, it is pleaded by the 5th respondent that the complaint before the MRTP Commission was already withdrawn.

So far as the next objection is concerned, as already expressed above, the definition of ***service provider*** under Section 2 (1) (j) of the Act requires to be interpreted in the context of the provision in which the said word is used as well as the object sought to be achieved by the Act. The preamble of the TRAI Act, 1997 read with the Statement of Objects & Reasons makes it clear that the Tribunal has been created with an object to adjudicate disputes, dispose of appeals and to protect the interests of the service providers and consumers of the telecom sector and for matters connected therewith or incidental thereto. Since the cable sector has been included within the definition of telecommunication services by virtue of the notification dated 9-1-2004 and keeping in view the context in which the word 'service provider' has been used in Section 14 (a) of the TRAI Act, 1997, I am of the opinion that the cable operators as well as the multi-system operators shall be construed to be service providers, and the dispute raised by the 5th respondent against the 3rd respondent is a dispute which could be entertained and adjudicated by the Tribunal under Section 14 (a) of the Act.

The last objection raised by the writ petitioners that the impugned order is in violation of principles of natural justice is also untenable. The 5th respondent was aggrieved against the action of the 3rd respondent, who is a service provider, as defined under the Act. Admittedly, the impugned order was passed by the Tribunal after

hearing the 3rd respondent – Service Provider. The petitioner claims to be a cable operator, who had allegedly obtained the exclusive right to distribute the pay channels offered by the 3rd respondent through its distributor / 4th respondent. The question before the Tribunal was whether the 3rd respondent – service provider can withhold the signals of pay channels to the 5th respondent herein. The said dispute was adjudicated on merits after hearing the parties to the petition. Even assuming that the said order adversely affected the rights of the petitioner acquired through the 4th respondent, it cannot be said that it is a necessary party for adjudication of the dispute raised before the Tribunal. Hence, the mere fact that the impugned order was passed without hearing the petitioner is of no consequence and does not vitiate the order passed by the Tribunal.

For the aforesaid reasons, I am unable to accept any of the objections raised by the writ petitioners. Consequently, I hold that they cannot maintain these writ petitions, without exhausting the efficacious alternative remedy of appeal available under Section 18 of the Act.

In the result, both the Writ Petitions are dismissed. No costs.

However, this shall not preclude the petitioners to avail the alternative remedy of appeal as available under law.

(G. ROHINI, J)

Date: 06-07-2006
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Note:- LR copy to be marked.